

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Christopher A. Minier - Bar. No. 190705 LAW OFFICES OF TODD C. RINGSTAD 2030 Main Street, Suite 1200 Irvine, CA 92614 Tel.: (949) 851-7450 Fax.: (949) 851-6926	FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; text-align: center;"> <b>FILED</b>   <b>OCT 3 - 2003</b>   <small>CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY _____ Deputy Clerk</small> </div>
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</b>	
In re: ROBERT LEE BAILOR          Debtor(s).	CASE NO.:  SA 02-19633 JR

## NOTICE OF SALE OF ESTATE PROPERTY

<b>Sale Date:</b> October 28, 2003	<b>Time:</b> <del>10:30 a.m.</del> 2:30 pm
<b>Location:</b> 411 W. Fourth Street, Santa Ana, CA 92701, Courtroom 5A	

Type of Sale: ☒ Public: ☐ Private: Last date to file objections: October 14, 2003

Description of Property to be Sold: Two bedroom condominium located at 16200 Mariner Drive, Huntington Beach, CA 92649. The Property is a lower "end unit" in a very desirable location right on Huntington Harbor, and it overlooks its own 40' boat dock on the main channel of the harbor. Property needs substantial repair / remodeling.

Terms and Conditions of Sale: Property is sold "as is," and "where is," with no warranties or representations. See attached Notice of Motion and flyer regarding the property, its sale and the terms of the sale. For further information regarding the Property, or to view the Property, please contact the Chapter 7 Trustee's realtor at the address and telephone number listed below.

Proposed Sale Price: \$470,000

Overbid Procedure (If Any): See the attached Notice of Motion for proposed overbidding procedures.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

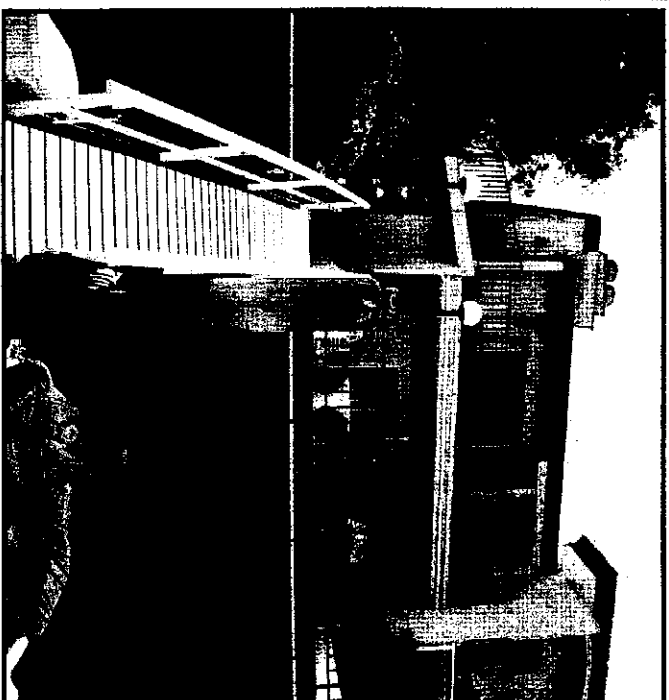
Oct. 28, 2003, at 2:30 P.m., Courtroom 5A, 411 W. Fourth Street.  
 Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Ms. Dianne Rector, First Team Real Estate  
19021 Goldenwest Street, Huntington Beach, CA 92648  
Tel.: (714) 536-9292 Voice Mail: (714) 647-7146  
Fax.: (714) 536-9088

Date: October 2, 2003

# Great Waterfront Opportunity

## Steps to the Blue Pacific in Huntington Beach, Calif.



Offered At: \$499,000

- Location...Location...Location
- Rare Downstairs Corner End Unit
- 40 Foot Boat Dock
- Extra Large Waterfront Deck
- Panoramic Main Channel Views
- ▶ 2 Bedrooms & 2 Baths
  - ▶ 1,236 Square Feet
  - ▶ Large Living Room with Fireplace
  - ▶ Large Dining Area
  - ▶ Glass Sliders to Deck Overlooking Water
  - ▶ Inside Laundry
  - ▶ Single Car Garage, Plus 1 Assigned Parking Space, Plus Room to Park Behind Garage
  - ▶ Across the Street from the Beach
  - ▶ Close to Shopping, Fine Dining, & Marina

This Property is a "Total Fixer" and is Sold "As-Is" Subject to Court Approval, but it is a Great Opportunity to Own One of the Best Locations with One of the Largest Boat Docks.

15200 Mariner Drive  
Huntington Harbour

*Shown By Appointment Only, Please Call:*

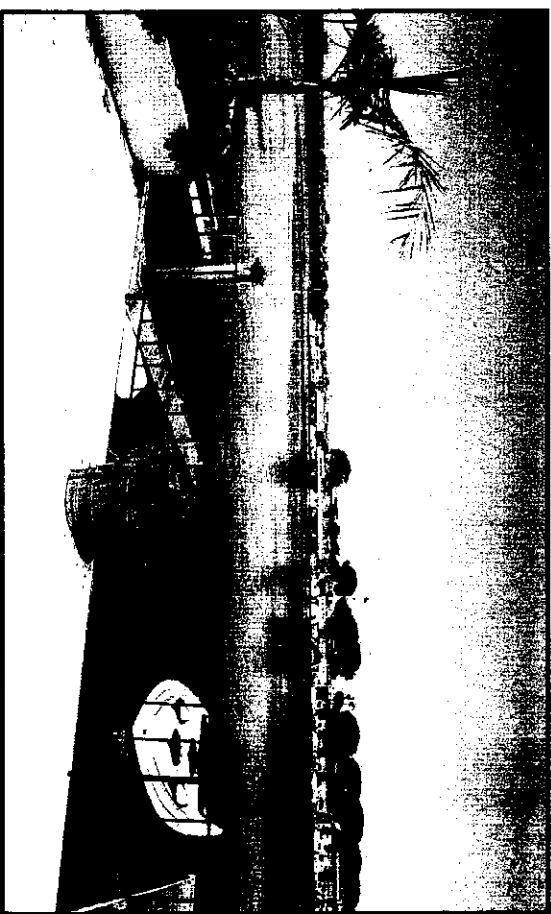
**Shianne Rector**

714 647-7146

714 847-5975

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Todd C. Ringstad [Bar No. 97345]  
Christopher A. Minier [Bar No. 190705]  
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Counsel for John M. Wolfe, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SANTA ANA DIVISION**

IN RE

CASE No. SA 02-19633 JR

CHAPTER 7

**ROBERT LEE BAILOR,**  
**dba WOODKING, aka ROBBIE BAILOR**

DEBTOR.

**NOTICE OF MOTION BY CHAPTER 7 TRUSTEE FOR ORDER: (1) APPROVING SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS; (2) APPROVING OVERBID PROCEDURES; (3) FOR A DETERMINATION THAT THE SALE WAS CONDUCTED IN GOOD FAITH PURSUANT TO 11 U.S.C. § 363(m); (4) DETERMINING THE EXTENT AND PRIORITY OF LIENS; (5) AUTHORIZING SURCHARGE AND SUBORDINATION OF CERTAIN LIENS; (6) AUTHORIZING DISTRIBUTION OF SALE PROCEEDS, IN PART, INCLUDING APPLICATION FOR PAYMENT OF BROKERS' COMMISSIONS; AND (7) FOR TURNOVER OF REAL PROPERTY**

**HEARING DATE:**

DATE: October 28, 2003  
TIME: ~~10:30 a.m.~~ 2:30 pm *th*  
PLACE: Courtroom 5A,  
411 West Fourth Street  
Santa Ana, California 92701

1                   **TO THE OFFICE OF THE UNITED STATES TRUSTEE, ALL CREDITORS AND OTHER**  
2 **INTERESTED PARTIES:**

3           **PLEASE TAKE NOTICE THAT** on October 28, 2003, at 10:30 a.m., in Courtroom 5A of  
4 the above-entitled Court, located at 411 West Fourth Street, Santa Ana, California 92701,  
5 before the Honorable John E. Ryan, United States Bankruptcy Judge, John M. Wolfe, the  
6 duly appointed, qualified and acting Chapter 7 Trustee (the "Trustee") for the above-  
7 referenced bankruptcy estate of Robert Lee Bailor (hereafter "Debtor") will, and hereby  
8 does, move the Court for an Order:

9           (1) Authorizing the Trustee's sale of real property (a lower "end unit"  
10 residential condominium with an approximately 40' dock on the main channel of  
11 Huntington Harbor), free and clear of liens, interests and encumbrances, all of which  
12 would transfer to and attach to the net sale proceeds, commonly known as 16200  
13 Mariner Drive, Huntington Beach, CA 92649 (hereafter the "Property") outside the  
14 ordinary course of business, to Mr. William G. Lunney, II, subject to overbids, for  
15 \$470,000.00 pursuant to the terms and conditions specified in, and by approving  
16 the, Residential Purchase Agreement and Joint Escrow Instructions, Addendum to  
17 Seller's Transfer Disclosure Form, and Buyer's Inspection Advisory, attached as  
18 Exhibit "1" to the full and complete moving papers. (Hereafter the aforementioned  
19 documents comprising Exhibit "1" to the motion collectively referred to as the  
20 "Agreements");

21           (2) Approving overbid procedures for the sale of the Property;

22           (3) Reciting that Mr. Lunney, or any other successful overbidder who is also a  
23 disinterested, non-insider, third party, is a good faith purchaser pursuant to  
24 Bankruptcy Code § 363(m) [11 U.S.C. § 363(m)];

25           (4) Determining the extent and priority of liens / encumbrances on the  
26 Property;

27           (5) Pursuant to Bankruptcy Code §§ 506(c) and 724(b), authorizing the (i)  
28 surcharge of judgment liens, tax liens and other non-consensual liens on the  
Property in order to pay administrative expenses, such as the fees of the Trustee,  
the Trustee's attorneys, accountants, realtors' commissions, other costs of the  
Property's sale and any taxes arising from the sale of the Property (hereafter  
collectively "Administrative Expenses"), (ii) authorizing the subordination of tax liens  
on the Property to all non-tax liens for the purpose of surcharging liens in order to  
pay the Administrative Expenses, and (iii) authorizing the pro-rata surcharge of all  
non-consensual, non-tax lien holders equally, in order to pay the above-described  
Administrative Expenses;

          (6) Approving the application of the Trustee's real estate broker / agent  
(First Team Real Estate and Dianne Rector) for allowance and payment of  
commission(s) totaling either 4% or 4.5% of the Property's gross sale price at the  
close of escrow;

          (7) Authorizing the partial disbursement of sale proceeds through the  
escrow, including payment of the following: (A) Payment in-full (approximately  
\$190,000) to Washington Mutual Bank, F.A., holder of first and second deeds of  
trust on the Property; (B) Approving the application Trustee's real estate broker and  
authorizing the payment of total commissions of: (i) 4.50% of the Property's gross

1 sale price at the close of escrow to be split between the Trustee's real estate broker  
2 and any broker for the successful buyer of the Property; or (ii) if Trustee's broker  
3 represent both the buyer as well as the Trustee, or if the buyer is not represented by  
4 their own broker, a total commission of 4.00% of the Property's sale price to the  
5 Trustee's broker First Team / Ms. Dianne Rector; and (D) normal "closing costs."

6 (8) In the alternative, authorizing sale of the sale of the Property to a third-  
7 person who submits a higher and better bid, taking into consideration both the  
8 purchase price and terms of sale, including the need to close escrow quickly; and

9 (9) Ordering turnover of the Property by the Trustee's proposed buyer, William  
10 G. Lunney, II (who currently resides at the Property) no later than 30 days after the  
11 hearing hereon, if Mr. Lunney is not the successful buyer of the Property.

12 The motion sets forth in detail the fact that Prior to Debtor's commencement of this  
13 bankruptcy case, a number of persons and entities obtained judgments against Debtor and  
14 recorded Abstracts of Judgment in Orange County, California, thus obtaining perfected  
15 judgment liens against the Property. Additionally, prior to the commencement of this case,  
16 a number of tax liens and other liens were also recorded against Debtor and the Property.  
17 In total, an investigation conducted by the Trustee reveals that the amount of liens on the  
18 Property far exceed the current fair market value of the Property. Therefore, there is no  
19 equity in the Property that can be used by the Trustee to pay Administrative Expenses  
20 without surcharging the interests of parties with liens against the Property. Further,  
21 because there is no equity in the Property, sale of the Property by the Trustee will not  
22 provide a return to Debtor's unsecured creditors.

23 Despite the fact that a sale of the Property will not provide a return to Debtor's  
24 unsecured creditors, the Trustee has elected to attempt to sell the Property for the benefit  
25 secured creditors because several of the Property's judgment lien holders have expressed  
26 to the Trustee a great desire that the Trustee sell the Property so that they might have at  
27 least some satisfaction on their judgments, rather than likely receiving nothing if the  
28 Trustee does not act and the holder of deeds of trust on the Property, Washington Mutual  
Bank, forecloses. The Trustee is sympathetic to the plight of these judgment lien holders,  
some of whom are over 80 years old. The Trustee desires to help these lien holders by  
selling the Property and is in a unique position to do so. In light of the fairly unusual  
circumstances presented, the Trustee believes he is justified in his decision to sell the  
Property. The Trustee believes that this is apparent when one considers that had Debtor's  
judgment creditors not taken the prudent step of recording Abstracts of Judgment, the  
Property would likely not be over-encumbered and the Trustee would be completely justified  
in selling the Property for the benefit of these exact same parties.

#### **EFFECT OF MOTION ON SECURITY INTERESTS IN THE PROPERTY:**

24 The Trustee's motion alleges, and requests that the Court find, that Bankruptcy  
25 Code § 506(c) authorizes the Trustee's surcharge of liens against the Property for the  
26 payment of Administrative Expenses. [11 U.S.C. § 506(c)]. The Trustee's motion further  
27 alleges, and asks the Court to find, that Bankruptcy Code § 724(b) permits tax liens on the  
28 Property, or proceeds from tax liens on the Property, to be distributed to: (i) first pay senior  
non-tax liens; (ii) secondly, to pay administrative expenses; and (iii) third, to the holder of  
such tax lien. [11 U.S.C. § 724(b)].

1 The Trustee's motion alleges, and asks the Court to find, that applying Bankruptcy  
2 Code §§ 506(c) and 724(b) together, the net effect of these provisions permits tax liens to  
3 be surcharged first for the payment of all administrative expenses before resorting to the  
4 surcharge of non-tax liens. Therefore, the Trustee's motion requests that the Court enter  
5 an Order on authorizing first the surcharge of all tax liens on the Property to pay all  
6 Administrative Expenses before non-tax liens are surcharged to pay said Administrative  
7 Expenses.

8 However, the Trustee's motion also requests that the Court authorize the surcharge  
9 of non-tax, non-consensual liens secondarily, if need be, to pay all Administrative Expenses  
10 of the bankruptcy estate. To the best of the Trustee's knowledge and belief, the holders of  
11 such non-consensual, non-tax liens are: (A) Huntington Marina Association; (B) Golden  
12 Akar Associates; (C) Robert P. George; (D) Sara Franke; (E) Steve and Georgene Groover;  
13 (F) Julie Chadwick; and (G) the State of California, Department of Industrial Relations,  
14 Uninsured Employer's Fund (if this last lien is, in fact, a non-tax lien).

15 Moreover, the Trustee requests that if non-consensual, non-tax liens do need to be  
16 surcharged for the payment of administrative expenses, that the Court permit them to be  
17 surcharged equally, i.e., each non-consensual, non-tax lien might get paid 20%, or 50%, or  
18 some other unknown percentage of each lien's value as of the date of Debtor's bankruptcy  
19 case filing, despite the dates of recordation of these liens.

20 The Trustee believes that the treatment of all non-consensual, non-tax lien holders  
21 equally is fair in light of the fact that it is three of such non-consensual, non-tax lien holders  
22 that are responsible for the Trustee being willing to take any action in this case. Where it  
23 not for these three creditors urging the Trustee to act for the benefit of all secured  
24 creditors, the Trustee would have filed a "no asset" report in Debtor's bankruptcy case,  
25 Washington Mutual would probably foreclosed on the Property, and it is likely that all  
26 parties with security interests in the Property would receive nothing. Therefore, based on  
27 the benefit that has been conferred, or might be conferred, upon the non-tax lien creditors  
28 that have not agreed to a pro-rata surcharge, by those judgment lien holders that have so  
agreed, it is equitable that they all be treated equally.

If the Court grants the relief requested by the Trustee, as described in this "Effect of  
Motion on Security Interests in the Property" section of this document, the liens on the  
Property that are presently known to the Trustee would be treated as follows, and would  
have the following priority:

**PAID IN FULL, NOT SUBJECT TO SURCHARGE-**

1. Washington Mutual Bank, full amount owed on First Deed of Trust.
2. Washington Mutual Bank, full amount owed on Second Deed of Trust.

**AT EQUAL PRIORITY, PRO-RATED EQUALLY, SUBJECT TO SURCHARGE SECONDARILY -**

3. The following seven non-consensual, non-tax liens at equal priority, and found by the  
Court to be in the amounts specified as of the date (December 16, 2002) of Debtor's  
instant bankruptcy filing, subject to surcharge equally after tax liens: (i) Robert P. George,  
Abstract recorded April 9, 1992, in the amount of \$7,961.58 (currently \$16,463.82 with  
statutory interest to the date of bankruptcy); (ii) Golden Akar Associates, Abstract recorded

1 November 4, 1992, in the amount of \$37,414.93 (currently \$75,250.08 with statutory  
2 interest to the date of bankruptcy); (iii) Golden Akar Associates, Abstract recorded May 21,  
3 1993, in the amount of \$21,855.33 (currently \$42,759 with statutory interest to the date  
4 of bankruptcy); (iv) State of Calif., Dept. of Industrial Relations, Uninsured Employer's Fund,  
5 Certificate of Lien in the amount of \$30,109.91 recorded on June 11, 1997 (if this lien is,  
6 in fact, a non-tax lien); (v) Sara Franke, Abstract recorded on August 11, 1998, in the  
7 amount of \$35,671.50 (currently \$51,180.89 with statutory interest to the date of  
8 bankruptcy); (vi) Steve G. Groover and Georgene Groover, Abstract recorded April 24,  
9 2000, in the amount of \$64,840 (currently \$81,431.04 with statutory interest to the date  
10 of bankruptcy); (vii) Huntington Marina Association, Abstract recorded October 6, 2000, in  
11 the amount of \$29,701.08 (currently \$36,211.10 with statutory interest to the date of  
12 bankruptcy); (viii) Julie Chadwick, Abstract recorded on approximately June, 2002, in the  
13 amount of \$5,935.00 (currently \$7,408.88 with statutory interest to the date of  
14 bankruptcy).

15 **PRIORITY BY DATE OF RECORDATION, SUBJECT TO SURCHARGE IN ORDER OF PRIORITY**  
16 **BEFORE SURCHARGE OF NON-TAX LIENS, AND ALSO SUBJECT TO PAYMENT OF SENIOR**  
17 **NON-TAX LIENS-**

- 18 4. State of Calif., Department of Industrial Relations, Uninsured Employer's  
19 Fund, Certificate of Lien in the amount of \$30,109.91 recorded on June 11, 1997 (if this  
20 lien is, in fact, a tax lien);
- 21 5. State of California, Board of Equalization, Notice of State Tax Lien recorded  
22 on July 26, 1999, in the amount of \$54,509.71;
- 23 6. State of California, Notice of State Tax Lien, recorded September 15, 1999,  
24 in the amount of \$4,152.81;
- 25 7. State of California, Notice of State Tax Lien, recorded on July 28, 2000, in the  
26 amount of \$4,402.75;
- 27 8. State of California, Notice of State Tax Lien, recorded October 12, 2001, in  
28 the amount of \$2,652.04;
9. State of California, Notice of State Tax Lien, recorded January 29, 2002, in  
the amount of \$3,278.53;
10. State of California, Notice of State Tax Lien, recorded February 21, 2002, in  
the amount of \$9,386.02;
11. United States Department of the Treasury, Internal Rev. Svc., Federal Tax  
Lien, recorded November 18, 2002, in the amount of \$6,874.73.

22 Additionally, there may be other liens against the Property that the investigation of  
23 the Trustee did not reveal, or that arose subsequent to the investigation conducted by the  
24 Trustee. If this proves to be the case, the Trustee's motion requests authority to treat said  
25 subsequently discovered liens in the manner set forth above, based on the date of  
26 recordation or other perfection of said lien(s) and whether or not said lien(s) are tax or non-  
27 tax liens.

28 Irrespective of the foregoing, the Trustee has also requested in the motion that the  
Court allow him to reserve the right to later challenge the validity of any lien on the  
Property.

1 The motion is made on the grounds that the above-described Agreements, sale,  
2 Order of Court, payments, surcharges and related matters are in the best interest of the  
estate, and will maximize the recovery by creditors with security interests in the Property.

3 The motion is based on this document, the separate, full Motion with its attached  
4 Memorandum of Points and Authorities, supporting Declarations and exhibits, and upon  
5 such further evidence and argument as is presented to and Considered by the Court.

6 **Wherefore**, the Trustee respectfully requests that the Court enter an Order  
7 approving the Agreements for the Trustee's sale of the Property, authorizing the sale as  
8 provided therein, approving the proposed overbid procedures, reciting that the parties to  
9 the sale of the Property are entitled to the benefit and protection of 11 U.S.C. § 363(m),  
10 determining the extent and priority of liens on the Property, authorizing the surcharge  
and/or subordination of certain liens on the Property as set forth herein, approving the  
11 application of the Trustee's real estate broker for allowance and payment of commission(s),  
authorizing the payments and disbursements through escrow as provided herein, and  
granting the other relief set forth above.

12 The foregoing brief summary is not a complete reiteration of the entire moving  
13 papers. Parties in interest are cautioned to review the above-described moving papers for  
14 further important details and provisions, all of which may be viewed at, or a copy obtained  
15 from the Clerk of the United States Bankruptcy Court, located at 411 West Fourth Street,  
Suite 2030, Santa Ana, California, 92701, or by contacting the Trustee's undersigned  
16 general counsel at the address shown on the upper left corner of the first page of this  
document.

17 **IF YOU DO NOT OPPOSE THE MOTION**, you need take no further action.

18 **IF YOU WISH TO OPPOSE THE MOTION**, pursuant to Local Bankruptcy Rule 9013-  
19 1(a)(7), your objections must be in writing and must be filed with the Bankruptcy Court  
Clerk (with a duplicate copy) at the United States Courthouse, located at 411 West Fourth  
20 Street, Suite 2030, Santa Ana, California 92701, and must be served upon the Chapter 7  
Trustee's general counsel, Christopher A. Minier, at the Law Offices of Todd C. Ringstad,  
21 located at 2030 Main Street, Suite 1200, Irvine, California, 92614, and on the Office of the  
United States Trustee, located at 411 West Fourth Street, Suite 9041, Santa Ana,  
22 California, 92701, not less than fourteen (14) days prior to the scheduled Court hearing.

23 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(a)(7)(A) further  
24 provides that any opposition is to consist of "(1) A brief, but complete, written  
statement of all reasons in opposition thereto . . . and answering memorandum of points  
25 and authorities, declarations and copies of all photographs and documentary evidence on  
which the responding party intends to rely . . . ."

#### 26 **SUBMISSION OF OVERBIDS**

27 To ensure that the sale of the Property is fair and reasonable, and in order to obtain  
28 the highest and best price for the Property, the Trustee has proposed in the motion that the



1 proposed sale of the Property to Mr. Lunney be subject to overbidding. If you wish to  
2 submit a competing bid for the purchase of the Property, you must attend the Court hearing  
and follow the overbidding procedure set forth below.

3 Only "Qualified Bidders" may submit an overbid at the hearing on the motion. A  
4 "Qualified Bidder" is one who: (1) provides a financial statement and/or such business  
5 and/or banking references at or prior to the hearing as will sufficiently assure the Trustee  
6 of the bidder's ability (based on the availability of financing or other conditions) to  
7 consummate the purchase of the Property) and to close escrow within 30 days; and (ii) prior  
8 to or at the hearing on the motion, you must present the Trustee's counsel, i.e., the  
undersigned, with a cashier's check, money order or other form of certified funds in the  
amount of \$15,000.00 as a deposit, which will be returned to the potential purchasers who  
prove not to be the successful overbidder, however said deposit will be non-refundable if  
the successful overbidder fails to close escrow on the Property.

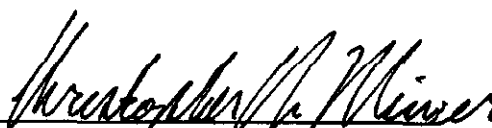
9 Your initial minimum overbid must beat least \$15,000.00 above the currently  
10 proposed purchase price of \$470,000. In other words, the first bid must be at least  
11 \$485,000.00. Each subsequent bid must be in increments of at least \$2,500.00 until the  
12 Property is sold to the highest Qualified Bidder (as defined above) upon terms which are the  
13 same or better than those terms proposed for the sale of the Property to Mr. Lunney, i.e.,  
those terms contained in Exhibit "1" attached to the full and complete motion

14 Any successful overbidder must close escrow within 30 days of the hearing on this motion,  
or the Trustee may consummate the sale with the next highest bidder.

15 If you would like more information about the Property, or would like to view the  
16 Property, contact the Trustee's real estate broker / agent, Ms. Dianne Rector at First Team  
17 Real Estate, 19021 Goldenwest Street, Huntington Beach, California 92648; Telephone  
(714) 536-9292, Ext. 1222; Voice Mail (714) 647-7146.

18  
19  
20 LAW OFFICES OF TODD C. RINGSTAD

21  
22 Date: October 1, 2003

23 By:   
24 Christopher A. Minier,  
25 General Counsel for John M. Wolfe,  
26 Chapter 7 Trustee  
27  
28